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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, D.C. 20510

March 23, 2015

Ms. Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

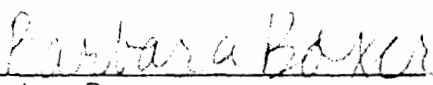
Dear Administrator McCarthy:

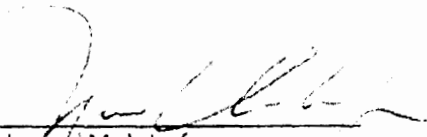
On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Wednesday, March 4, 2015. The committee greatly appreciates your attendance and participation in this hearing to examine the Environmental Protection Agency Budget.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. We ask that you respond to each member's request in one typed document. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth.Olsen@cpw.senate.gov or deliver one hard copy within 14 days after the date you receive this letter. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Susan Bodine Chief Counsel on the Committee's Majority staff at (202) 224-2829, or Jason Albritton Senior Policy Advisor Minority staff at (202) 224-1914.

Sincerely,


Barbara Boxer
Ranking Member


James M. Inhofe
Chairman

Questions for the Record
Senate Environment and Public Works Committee Hearing:
“Oversight Hearing: The President’s FY 2016 Budget Request for the Environmental Protection
Agency.” On March 4, 2015
EPA Administrator Gina McCarthy

Chairman Sen. Inhofe:

Ozone:

1. In the proposed rule, you state that EPA will take a series of actions in the next year to implement the new standard. (EPA says it will issue guidance for state designations within 4 months of finalizing the rule, provide guidance for infrastructure SIPs, and propose any needed implementation rules within 1 year.)
 - Approximately how much money, resources, and staff will be required to complete this work in FY 2016?
 - Has EPA requested the resources needed to complete all of this work?
 - Where in the budget are these resources requested?
2. The proposal relies heavily on “unknown technologies” for compliance (Table 4-10 in the draft RIA: 66% of NOx controls in the East are unknown and 70% in the West are unknown). However, only “extreme” nonattainment areas can include unknowns in their SIPs.
 - How do you expect states to comply with a standard when your agency can’t even identify ways to make it feasible?
 - Do you expect states to have to choose between extreme sanctions or self-designating themselves as “extreme” nonattainment areas, accepting all the extreme stationary source requirements that go along with that designation?
 - Your RIA already assumes in the “known controls” that the existing source proposal will be complied with fully, so how is it even remotely possible to achieve your proposed standard?
3. How much of future attainment relies on “unknown controls”? How does EPA calculate the cost these future “unknown controls”? Why has EPA lowered the cost of those unknown controls by half since developing the 2011 ozone rule?
4. In 2011, President Obama pulled the plug on this same proposal due to “regulatory burdens and regulatory uncertainty.” Our economy was still struggling to recover from the recession, and the \$90 billion price tag was something even he was unable to justify.
 - Do you really think that our economy is in better shape now to handle a \$3 trillion rule than it was in 2011?
 - What has changed since the President’s decision that signals now is an appropriate time to radically revise the standard before the benefits of the last one have been fully implemented?

5. Compared to just four years ago, EPA has lowered cost estimates for the same stringent ozone standards by as much as \$51 billion. Have compliance costs for ozone controls really dropped by over 80% since 2010?
6. Over the last four years, EPA has slashed its cost estimates for the same stringent ozone standards.
 - Has the cost of compliance technologies gone down, or did EPA change the assumptions in its cost-benefit analysis?
 - How much of that reduction is due to projected air quality improvements versus changes in EPA's control cost assumptions?
7. In 2010, EPA projected that the same ozone standards that EPA is now proposing could cost as much as \$44 billion per year. These are straight-up, added costs to American manufacturing. I'm concerned that, during this slow economic recovery, we are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?
8. High levels of natural background ozone may cause many otherwise clean states, especially in the West, to be unable to meet EPA's stringent ozone proposal even with costly emission controls.
 - EPA says it can deal with these concerns through its "exceptional events" program. Yet, since 2008, Utah has submitted 12 exception event demonstrations, and EPA has yet to approve one. Historically, how many times has the exceptional exceedance policy been used by the states and EPA? How long and what was the cost to taxpayers each time it was used? How many times annually do you expect it to be needed going forward?
 - EPA also says it can deal with these concerns through "Rural Transport Areas." Yet EPA has no track record for Rural Transport Areas under an 8 hour ozone standard like in the proposal. Why should we think the Agency can use Rural Transport Areas to provide regulatory relief to states with high background ozone?
9. Yellowstone national park's current ozone level is 66ppb—
 - Is the Agency considering setting a standard that is below the current ozone levels at Yellowstone National Park?

- I understand EPA has been criticized regarding the way background ozone concentrations are calculated and used. What steps is the agency taking to improve that process?
10. I understand that EPA does not exclude Mexican and Canadian ozone emissions when it determines background levels of ozone. What could a county in my district do to control emissions in a foreign country?
11. High levels of ozone transported from Asia and Mexico may mean that many otherwise clean states, especially in the West, will be unable to meet EPA's stringent ozone proposal even with costly emission controls. EPA says it can deal with these concerns through Clean Air Act provisions on international transport.
- EPA has been notoriously slow in providing states similar regulatory relief for natural ozone under the Exceptional Events Program. Why should states believe that EPA will be any better in approving regulatory relief for international ozone transport?
 - Will EPA commit to not designate as nonattainment any counties that fail the proposal's ozone standards because of international transport?
12. EPA halted implementation of the 2008 ozone standard from 2010-2012 while it reconsidered that standard. That delay put state implementation of the 2008 ozone standard well behind the normal schedule. States are now committing time and money to catch up on the 2008 ozone standard. In fact, EPA just issued the implementation rules for the 2008 standard on February 13, 2015. Why is EPA proposing new ozone standards when it hasn't given states a chance to implement the current ones?
13. EPA chose to project the costs of its proposed ozone standard to 2025, eight years after counties will be designated as nonattainment areas under the proposal.
- What consequences will those counties face while designated nonattainment?
 - Does EPA's modeling capture the cost of lost economic activity that counties in nonattainment areas will experience during those eight years?
14. EPA chose to project the costs of its proposed ozone standard to 2025, saying that would be the year in which most counties would have to attain the standards if granted compliance extensions.
- Since EPA bases its entire economic analysis on these assumed extensions, will the Agency commit to extending compliance deadlines to the maximum extent possible when finalizing the ozone standards?
 - If EPA assumed longer compliance deadlines, shouldn't it write those compliance extensions into the final rule?
15. EPA reassures that counties won't be designated as nonattainment areas under its proposed stringent ozone standards for another three years. But won't those new

standards be immediately effective on PSD permits, making it harder for business to build and expand facilities to create new jobs?

16. EPA has said that most counties won't need to attain its stringent ozone standards until 2025. But counties in nonattainment areas will face severe regulatory consequences in just three years, and the new standards become immediately effective for permits to expand business. EPA seems to want us to think these proposed standards are a "next decade" problem, but aren't they a now problem?
17. EPA can't even point to controls capable of almost half the emissions reductions needed in the east – and all of the reductions required in California – to meet its stringent proposed ozone standard. This sounds like shoot first, ask questions later rulemaking. Should we be imposing this much burden on the American people when EPA doesn't even know how this rule can be accomplished?
18. EPA's modeling for its proposed stringent ozone standards caps costs for emissions reductions required from so-called "unknown controls" based on costs of known controls. This defies the basic economics of increasing marginal costs. Does EPA really believe that the costs of reaching the highest low-hanging fruit are the same as those to get the fruit at the top of the tree?
19. We hear a lot about the need to repair "crumbling roads and bridges." However, stringent ozone standards could make it harder for states to show that proposed highway project "conform" with ozone standards. Has EPA considered the economic and safety impacts that could result if these stringent ozone standards block crucial transportation projects?
20. According to EPA, ozone-forming emissions have been cut in half in the last three decades. This progress will continue under current regulations. Wouldn't you agree that Americans are already enjoying the benefits of cleaner air, and will enjoy even more future benefits, regardless whether the existing standards are adjusted?
21. EPA's modeling indicates that its proposed ozone standards may actually increase mortality in cities like Houston. Can you please explain how this proposal could end up increasing deaths in some areas?
22. Ozone is mainly outdoors. Yet most people spend 90% of their time indoors. Do you think this is why recent published studies found that indoor air quality and poverty were much more strongly linked to asthma than outdoor air quality?
23. Only 1 of the 12 studies considered by EPA show any link between long-term ozone exposure and mortality. And this study did not find any link in California, where ozone

levels are the highest in the country. Shouldn't we be concerned that EPA is cherry-picking science to support its regulatory agenda?

24. I'm concerned that EPA is cherry-picking and contorting science to support its ozone proposal. For instance, one study found no statistically significant difference in lung function in humans exposed to ozone at levels above and below the standards in EPA's ozone proposal. Yet EPA "reanalyzed" that data and decided there was a statistically significant impact after all – leading that study's author to say that EPA "misinterpreted" his data. Shouldn't EPA just go where the science points, rather than trying to shoehorn findings into its regulatory agenda?
25. All of the clinical studies cited by CASAC in support of the 60 ppb standard were created by the EPA. Yet, all of the non-EPA literature on health impacts of 60 ppb ozone cited by CASAC does not support a 60 ppb standard. Is this what EPA meant when it said that "increasing uncertainty in the scientific evidence at lower ozone concentrations" led it to not include a 60 ppb standard in the ozone proposal?
26. EPA has released maps showing only the projected counties in non-attainment in 2025.
 - Under EPA guidance does the agency designate non-attainment area boundaries starts with metropolitan area as the "presumptive" nonattainment area? Why are your maps inconsistent with your guidance?
27. How many counties still do not meet the 1997 ozone standards? How about the 2008 standards? Doesn't it make sense to work on attaining the existing standards, the tightest standards ever, before promulgating new standards?
28. Why does EPA leave California off of its maps and analyses? If California is being give a longer period of time to attain the standards, shouldn't other places in the country be granted that latitude as well? How much (\$/ton) are NOx offset reductions selling for in Houston? Los Angeles? Other places?

Climate:

1. The budget request includes a \$4 Billion incentive program for states that reduce CO2 emissions beyond the existing source proposal.
 - How do you propose to implement this program?
 - Do you plan to send Congress a legislative proposal?
 - If the proposal is to give states money if they go beyond EPA mandates, will the result be to transfer taxpayer dollars away from states with large emission reduction burdens under your plan to states that have a smaller burden. For example, Vermont has no emissions reduction obligation under your plan because

its power plants are small. So, would you automatically transfer taxpayer money from Southeastern and Southwestern states to Vermont?

2. With respect to the Clean Power Plan, your justification statement says: "In FY 2016, the EPA will encounter a staggering workload to implement these rules and agency resources have been shifted to help meet the demand. Because of the breadth, complexity and precedent-setting nature of work, the agency expects a marked increase in demands for legal counsel in both headquarters and Regional Offices. In addition, each EPA action is expected to be challenged in court, which will require skilled and experienced attorneys specialized in the Clean Air Act to devote significant resources to defense of these actions."
 - In your own budget justification statement you say that these rules will result in a "staggering workload" to implement and defend these two rules. Don't you think those taxpayer dollars would be better spent increasing funding to states to implement existing programs rather than spending it on lawyers?
3. Recent correspondence between your agency and the House Energy and Commerce Committee indicated EPA has not "explicitly modeled the temperature impacts of the Clean Power Plan" and could not state what, if any impact the rule would have on global temperatures or sea rise levels.
 - Why hasn't EPA done the modeling? Is it a matter of budgeting?
 - Why is your agency attempting to impose this extremely complex rule and spend billions of taxpayer dollars to address global warming when you haven't even checked to see if the rule would actually achieve your global warming goals?
4. Your budget would eliminate funding under the Indoor Radon Abatement Act which authorizes grants to states to address radon (-\$8 million) even though indoor radon is the second-leading cause of lung cancer and the leading cause of lung cancer for non-smokers and the funding was targeted this funding to support states with the greatest populations at highest risk. According to your Budget in Brief, indoor radon causes an estimated 21,000 lung cancer deaths annually in the U.S. Carbon dioxide causes no deaths.
 - Why would the budget propose spending \$279 million to rework the U.S. energy economy (climate regulations) while ignoring real environmental threats?
5. Section 110(c) of the Clean Air Act requires EPA to issue a Federal implementation Plan (FIP) if a state does not submit a State Implementation Plan (SIP), does not submit a satisfactory SIP or does not make a satisfactory SIP revision (42 U.S.C. 7410(c)). Please provide a list of enforcement mechanisms with cites to the relative legal authority the EPA will use to enforce all components of a federal plan on a state that does not submit a SIP, does not submit a satisfactory SIP - in whole or in part - or fails to make a satisfactory revision that meets the criteria of the proposed Clean Power Plan.

6. During the hearing, I asked you if the EPA would consider withholding federal highway funding if a state that does not submit a SIP, does not submit a satisfactory SIP - in whole or in part - or fails to make a satisfactory revision that meets the criteria of the proposed Clean Power Plan. You responded,

“Ms. McCarthy. This is not a traditional State SIP under the national ambient air quality standards. There are other processes for us to work with States. Clearly our hope is that States will provide the necessary plans. If not, there will be a federal system in place to allow us to move forward.”

Will you clarify for the record whether EPA would consider withholding federal highway funding to enforce any elements of the proposed Clean Power Plan?

Waters of the United States

1. Please provide me with examples where EPA or the Corps has used a groundwater connection to establish jurisdiction over a body of water that has no surface connection, direct or indirect, to a navigable water. For any such examples, please also provide the distance between the body of water that lacks such a surface connection and the nearest water of the United States. Please exclude any allegations that a groundwater connection establishes the existence of a point source discharge where the body of water with no surface connection was itself determined to be a point source, rather than a water of the United States.
2. Is it currently the national policy of either EPA or the Corps of Engineers to establish jurisdiction over all wetlands in flood plain?
3. Is it currently the national policy of either EPA or the Corps of Engineers to establish jurisdiction over all waters in flood plain?

Hydraulic Fracturing

1. The EPA continues its study into the relationship between drinking water and hydraulic fracturing, which was initiated in 2010. Well over \$20 million has been spent on this study and the timeline continues to slip. In fact, the draft assessment report was expected in December 2014 yet today, there is no indication when this will be released.
What is the current timeline for release of the EPA's drinking water study?
Will the report undergo interagency review prior to its release? If so, which agencies will be a part of the review? If not, why not?
After the draft assessment report is released, what is the timeline moving forward?
2. You've said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic

fracturing impacting drinking water. The White House Council on Economic Advisors released a report last week that touted the economic benefits because of the increase in domestic oil and natural gas and clearly linked the production increases to the use of hydraulic fracturing and horizontal drilling. What is your vision for getting the American public to understand that hydraulic fracturing is safe and that fracking has unlocked an American energy revolution that has lowered all Americans's energy prices, created jobs, helping lower GHG emissions and revitalizing such industries as the manufacturing, steel and chemical sectors?

3. In the draft FY 2016 budget proposal, it states that EPA will respond to peer review comments from the Agency's Science Advisory Board (SAB) in order to finalize the study. It further suggests that the report will provide a synthesis of the state of the science, including the results of research focused on whether hydraulic fracturing affects drinking water resources, and if so, will identify the driving factors.
 - Clearly you already have a plan for additional research. Can you share those plans?
 - More importantly, will the Agency actually consider the recommendations of its own Science Advisory Board in this process, particularly if those recommendations do not align with EPA's own research initiatives, which you just addressed?
4. Director McCarthy, the President's new economic report says that 1) "natural gas is already playing a central role in the transition to a clean energy future," 2) that an effective regulatory structure for addressing environmental concerns already "exists primarily at the State and local level," and 3) that unconventional natural gas production technology unleashed in the U.S. "can help the rest of the world reduce its dependence on high-carbon fuels." Given this positive view from the White House, which is supported by a broad scientific consensus, how do you intend to ensure that your agency's proposed regulations on methane will not short-circuit the U.S. energy revolution that is driving so much job creation?
 - Can we assume that the upcoming EPA study on hydraulic fracturing will not conflict with this latest White House report that recognizes the clear advantages of unconventional energy development?
5. In February 2014 the EPA's IG sent a memo to the EPA Office of Water outlining an initiative the IG has underway that will "determine and evaluate what regulatory authority is available to the EPA and states, identify potential threats to water resources from hydraulic fracturing, and evaluate the EPA's and states' responses to them." Do you consider this a duplication of the EPA's efforts as it relates to the multi-year and multi-million dollar hydraulic fracturing and water study currently in process at the EPA

and if not, then how do these studies differ? Hasn't EPA independently done this type of evaluation (see the letter from EPA to NRDC)?

SRF Program:

1. It is my understanding that since the program's inception in 1988, the Clean Water State Revolving Loan Funds have provided a total of \$105 billion in assistance, leveraging federal capitalization grants totaling approximately \$36.2 billion. Further, since the program's inception in 1997, Drinking Water State Revolving Loan Funds have provided approximately \$33 billion in assistance, leveraging federal capitalization grants totaling approximately \$19 billion. This means that for every federal dollar invested in the Clean Water SRF community wastewater systems have received nearly \$3 dollars in assistance and for every dollar in the Drinking Water SRF community water systems have received approximately \$1.75 dollars in assistance.
 - Do you agree that the SRF program has been among the most successful programs we have in government?
 - If that is so, why does the President's budget perennially underfund these programs?
2. Under the Clean Water Act, EPA is supposed to send a report to Congress on the funding needs for both wastewater and drinking water infrastructure. The last report to Congress on wastewater needs was based on the 2008 Clean Water Needs Survey. The estimate of need in that survey -- \$298 billion over 20 years -- is woefully out of date. That estimate is based on cities' own capital improvement plans. It does not reflect new mandates like the hugely costly sewer overflow control measures that EPA is imposing on cities in enforcement actions or costly new requirements for nutrient reductions and stormwater controls.

By failing to provide an updated estimate of needs, EPA is doing a disservice to Congress, to cities, and to itself. We all need reliable information to make good decisions and EPA is required by law to update the needs survey every 4 years.

- When will EPA provide Congress with the updated the Clean Water Needs Survey?
3. We all know that the needs for both water and wastewater are huge. According to the U.S. Conference of Mayors, cities are spending \$115 billion a year to provide water and wastewater services and meet federal mandates. So, the proposal to provide a combined \$2.3 billion for the Clean Water and Drinking Water State Revolving Funds is a drop in the bucket. Since the federal government does not provide funding to meet those mandates, I think it is important to take a hard look at how we are asking cities to spend their citizen's money.

- We all support clean and safe water. But, I am told that EPA enforcement officials extract penalties on top of commitments of hundreds of millions of dollars to address sewer overflows. Is that right?
 - I also am told that EPA enforcement officials will require complete elimination over sewer overflows if they think a city can pay for it, when a less expensive approach could meet water quality standards. Is that right? Is EPA requiring cities to do more than meet the standards that states have set and EPA has approved that will protect water quality?
4. Given the enormous cost of meeting water and wastewater mandates, affordability is a significant issue. It is my understanding that at EPA Headquarters, you talk about giving cities more time to meet mandates; you talk about adaptive management; and you talk about using green infrastructure alternatives. However, when they bring enforcement actions against cities, EPA regions and Headquarters enforcement officials are not providing these flexibilities.
- How are you addressing the real affordability concerns of cities?
 - Do you think your enforcement officials should try to extract every last dollar from a city that you claim they can afford even if spending more money will not provide additional water quality benefits?
 - If a city steps up and agrees to spend hundreds of millions or in some cases billions of dollars, do you think it is also appropriate to impose penalties on that city when the penalty will simply go to the U.S. Treasury and will reduce the amount of funding available to help improve the environment?
5. I am very concerned that the way EPA looks at affordability when they decide what mandates to impose on communities means that our poorest citizens will end up paying 10% or more of their income on sewer bills.

Last Congress, in Title V of the Water Resources Reform and Development Act, we amended the Clean Water Act to give direction on how to identify what communities would experience a significant hardship raising the revenue to finance projects to meet Clean Water Act mandates. One of the criteria that we listed in the statute is whether the area is considered economically distressed under the Public Works and Economic Development Act. Under this Act, a community or area within a larger political boundary is economically distressed when --

- the per capita income at 80% or less than national average,
- unemployment is 1% or more greater than national average, or
- there is an actual or threatened severe unemployment or economic adjustment.

This information is provided by the community and must be accepted unless the Secretary of Commerce determines it is inaccurate.

- Will EPA also incorporate this approach into your evaluation of affordability when taking enforcement action?

Technical Assistance to States

1. In EPA's FY2016 Budget Request, the Agency did not request any funds for the EPA technical assistance competitive grant program. As you know, this program provides small and rural communities with the training and technical assistance necessary to improve water quality and provide safe drinking water. Many communities count on this program to assist them in complying with federal regulations when operating drinking and wastewater treatment facilities. These communities believe that is the most effective program to aid in compliance with the requirements of both the Clean Water Act and the Safe Drinking Water Act. In the past Congress has agreed and from FY2013 - FY2015 appropriated \$12.7 million for the program. Given its success and importance to so many communities across the country, why is EPA is not requesting any funds to support this grant program in FY 2016?
2. You have requested \$46 million and 13 new FTES for an unauthorized program to improve climate resilience for water and wastewater facilities. In contrast, you have requested only \$5 million for FY 2016 out of the EPM account to set up the implementing the newly authorized Water Infrastructure Finance and Innovation Authority (WIFIA), but no money out of the STAG account to actually implement it. How can you explain the disparities in these requests? What does this say about your priorities?

New Definition of Flood Plain

On January 30, 2015, the President signed a new Executive Order (EO 13690) that changed the existing flood plain management policy that has been in effect since 1977. With these changes, the policy applies to all agencies and all federal actions and flood plain is now defined as either the 500 year flood plain or a larger area based on climate modeling.

- Will this new definition affect the projects that states can fund using the State Revolving Loan Funds?
- Will this new definition affect the type, size, or location of infrastructure that EPA requires cities to build to treat wastewater or to address sewer overflows under enforcement agreements?
- Will this new definition affect the conditions attached to municipal stormwater permits?
- What was EPA's involvement in developing this Executive Order?
- What outreach efforts were made before signing this Executive Order to state and local governments?

Stormwater

EPA has announced that it has abandoned its plans to develop a national storm water rule making that would have tried to expand your authority to regulate not only pollutants, but also the actual flow of water. That is not surprising given the fact that courts have made it clear that the Clean Water Act does not give EPA any authority to regulate water flows. However, it is my understanding that your agency is continuing to advance this agenda by regulating water flows in individual permits.

- Will you commit to me that your agency will use Clean Water Act permits to regulate the discharge of pollutants only and not the flow of water?

Attorneys/Workforce

1. Administrator McCarthy, the President's budget request seeks an additional \$10 million that would go to hire almost 40 additional attorneys to work at EPA. More than \$3.5 million would go to hire 20 new attorneys who would be devoted to supporting the Clean Power Plan alone.

At a House committee hearing last week, you stated that these attorneys would not be "litigation attorneys" and instead would be used to help with reviewing permits and assisting states to set up their programs.

However, your own budget justification says these additional attorneys are needed because, "In addition, each EPA action is expected to be challenged in court, which will require skilled and experienced attorneys specialized in the Clean Air Act to devote significant resources to defense of these actions."

- Which is it? Do you stand behind your recent statement to Congress, meaning the budget justification is incorrect? Or do you agree that you need to hire additional attorneys in part to defend these unlawful rules in court?
2. The Budget justification goes on to say that additional legal resources will make EPA more responsive to states, industry, and citizens, and will make EPA's actions more defensible in court. Yet the budget request also says there are no performance measures for the agency's attorneys like there are for other programs.
 - Why is that?
 - Does this lack of staffing or accountability explain why, when it issued performance standards for new sources in September 2013, EPA seemed unaware of the Energy Power Act provision that prohibits the use of carbon capture projects receiving certain federal funding from being used to show the technology had been adequately demonstrated?
 - Shouldn't EPA attorneys and staff in the Air office have known about that provision before the rule was proposed?
 - How are you going to ensure that these additional legal resources will be used effectively?
 - Would these be term-limited positions, or permanent hires?
 - Do the agency's attorneys – or any employees for that matter – keep track of their time, like attorneys in the private sector do or workers at a coal mine or factory would?
 - Given the issues EPA has had with time and attendance problems, what is EPA doing to ensure that EPA staff are in fact doing the jobs they are being paid to do?
 3. Please describe the process and resources the Agency (both Headquarters and Regional Offices) currently uses to track litigation to which it is a party, as well as deadlines for

regulatory or other EPA action that have been established in litigation settlements or court orders. What efforts are planned in FY 2016 to improve this process and the public transparency of this tracking? What public notice and opportunity for comment and public participation does the Agency give to the public when a deadline established in a settlement or court order is revised or extended?

4. For its FY2015 budget proposal, EPA requested to remove the 50 person ceiling for hiring under Title 42. A March 5, 2015, EPA Inspector General report found that EPA's Office of Research and Development did not always demonstrate the need to use Title 42 to recruit or retain 19 positions reviewed. In four cases reviewed, the IG found that employees were converted to Title 42 to perform the same position, yet paid a total \$47,264 more in salary for performing the same job. The EPA OIG recommended that EPA improve transparency and its justification for the use of Title 42 appointments or reappointments, which could result in potential monetary benefits of \$3.5 million. EPA did not agree with the OIG's recommendation. The OIG responded that EPA's alternate approach does not address the need to justify the need to use Title 42 authority or the need for more transparency in the decisions to use the Title 42 authority.

- Why did EPA request to remove the 50 person ceiling under Title 42 for FY2015 and not for FY2016?
- Why did EPA disagree with the OIG's recommendations?
- How will the EPA address the need for greater transparency and justification for Title 42 hiring?

Homeland Security

1. Administrator McCarthy, President Obama recently said that terrorism is less of a threat to the American people than climate change. Do you agree?
2. Does the President's thinking explain why EPA's budget request has cut homeland security related funding in several important areas?

For example, the budget would cut more than \$1 million from the Science and Technology account for work to treat contamination from chemical and radiological incidents (Page 131). The budget would also cut more than \$2.5 million from the Superfund account reducing EPA's ability to detect threats and test and decontaminate sites.

- Why is EPA cutting back its capability to detect and respond to biological or radiological attacks?
3. The budget for emergency preparedness is essentially stagnant (only a slight \$200,000 increase due to higher fixed cost for rent and staff salaries).
- What does this mean in practice – fewer air monitoring flights, slower response times, increased risks to human health and the environment from a terrorist event?

4. Recent scandals suggest that EPA has a “culture of complacency” among some supervisors and managers when it comes to time and attendance problems, computer usage, and property management.
 - Given these concerns – and ongoing work by the Office of Inspector General – I am troubled to see the low priority that EPA places on screening job applicants and making sure its employees have been vetted and are suitable for their positions of trust.
 - For example, the homeland security budget for conducting background checks for employees and contractors would be cut by \$340,000 – even though the John Beale episode has highlighted the need for improved background checks. Do you think this is the time for EPA to be cutting back on its process for doing background checks?
5. The IG has also raised concerns about the Office of Homeland Security and its interference with the IG’s law enforcement work. How will this be resolved so it does not become a distraction to the Agency and impede EPA’s homeland security mission?

GAO Reports

1. The Government Accountability Office issued a report last year on problems with how EPA analyzes its regulations for economic impact, less burdensome alternatives, and uncertainties. GAO found that EPA’s regulatory impact analysis (RIAs) do not clearly identify the costs of EPA’s rules and the data EPA used in its analyses were often out of date and irrelevant.

For example, GAO found that for several high-profile clean air and water rules, EPA relied on employment data that was between 20 and 30 years old and from only four industrial sectors. The GAO report states, “Without additional information and improvements in its approach for estimating employment effects, EPA’s RIAs may be limited in their usefulness for helping decision makers and the public understand the potential effects of the agency’s regulations on employment.”

That’s a big problem – that EPA is making these incredibly significant regulatory decisions – and the American public, Congress, and even EPA itself do not know what the economic impacts or potential job losses will be.

- Is EPA continuing to rely on the outdated and limited employment data when analyzing the potential job impacts of its rules? If not, what is EPA relying on?
 - How much of EPA’s budget request will be going toward improving and updating the employment data that EPA uses in its economic analysis documents?
2. The GAO report also found that EPA had cut corners in its economic analysis due to the short time frames it had for issuing rules pursuant to court-ordered deadlines and litigation settlements.
 - What criteria does EPA use when agreeing to a rulemaking deadline in a litigation settlement?

- How does EPA's obligation to conduct a robust analysis of a rule's economic impact factor into these court-ordered deadlines, or does it get short shrift in the discussions?
- Is part of the problem that laws like the Clean Air Act have unreasonable deadlines?
- Would you support attempts to give EPA additional time under the law to issue rules or update standards every 5 or 8 years as currently may be the case?

Facilities

Administrator McCarthy, EPA's budget justification says EPA is continuing to recalculate its facility and rent needs. It says that EPA plans to spend \$1 million from the Science and Technology account to study further consolidation (Page 140) and that EPA intends to save \$9.5 million from the EPM account from these efforts (Page 427).

- What plans if any does EPA have to close or relocate program, regional or lab offices or spaces across the country in FY 2016? When will affected offices be informed of their closure? Will the affected employees be given the opportunity to relocate or transfer to another duty station?
- How much has EPA spent in FY 2014 and 2015 to relocate employees? How much does it expect to spend on relocation expenses in FY 2016?

Superfund/Hazardous Waste

1. The FY 2016 budget shifts EPA's emphasis from well-established programs approved by Congress to ones that advance the President's Climate Action Plan.
 - For example, the budget would cut almost \$1 million and 5 FTEs from its RCRA corrective action program, which will reduce "EPA's technical support to state partners and may reduce the pace of cleanups including site-wide 'RCRA remedy construction' determinations." How will this reduction impact EPA's implementation of recommendations in the Government Accountability Office's 2011 report concerning RCRA corrective actions?
 - How will EPA prioritize its work and support to states in response to the proposed reductions in funding?
 - Will any sites or states that would have received support in order for EPA to meet its corrective action goals in the FY 2014-2018 Strategic Plan, no longer receive support due to the proposed reductions in funding?
 - In another example, the FY 2016 budget request would cut funding for the RCRA waste management program by \$1.3 million and more than 9 FTEs, which according to EPA's budget justification "may delay activities such as conducting additional analysis to support non-hazardous secondary materials categorical rulemakings and responding to regulatory backlog petitions." Please identify how many "regulatory backlog petitions" EPA had at the start of FY 2015 and the backlog time for each petition.

- How will this proposed reduction impact EPA's implementation of the final Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities rule, signed by EPA on December 19, 2014?
2. Notably, the FY 2016 budget proposed a \$2.3 million increase, including an additional 4.2 FTEs, for the Sustainable Materials Management program to implement key aspects of the President's Climate Action Plan.
 - The budget justification states EPA will explore the application of Sustainable Materials Management "approach to other high priority areas." What are these areas?
 - The budget justification also states that EPA plans to hire 5 FTEs to serve as "Community Resource Coordinators for climate adaptation, sustainability, and communities work" who will "work as a cross-agency, multi-media team to facilitate access to EPA's programs and resources." Please explain whether these would be permanent or term-limited positions, the professional qualifications for these positions, and from what Headquarters or regional office such positions would be based.
 - The budget request proposes the creation of a \$1.3 million grant program "to support the EPA's investment in climate mitigation through waste program activities to reduce greenhouse gas emissions." Please describe the statutory authority for this program, the anticipated number of grants that would be funded in FY 2016, and a summary of the criteria EPA would use for grant awards.
 3. Concerns remain about the slow pace of Superfund cleanups. In FY 2014, EPA achieved construction completions at only 8 Superfund sites, an all-time low, with an enacted budget for Superfund cleanups at \$555 million. In FY 2016, EPA is proposing to achieve construction completions at 13 sites with a budget request of \$539 million. How many additional Superfund sites would EPA be able to clean up if the \$214 million that the President has requested for greenhouse gas rules were put toward the Superfund program instead?

Keystone

1. Administrator McCarthy, in January of this year you stated that EPA believes current low oil prices are a short-term situation and will not affect how your Agency crafts new regulations.
 - Do you still stand by that statement?
 - Can you please explain to me why 3 weeks later EPA told the State Department that it should revisit its analysis of the Keystone XL pipeline with a new assumption that the current low oil prices are permanent?

- As a general rule, you ignore short-term oil prices when evaluating costs and benefits. But, politics appear to determine when you make an exception to that rule. How can you reconcile this inconsistency?

Methane

1. Administrator McCarthy, the Administration has acknowledged the great benefits that we are now enjoying as a result of the natural-gas renaissance in the US. In fact, the US is now the world's largest gas producer. As this was occurring, our nation's producers have been making great strides in reducing methane emissions thanks to investments in technology allowing us to produce more natural gas in a cleaner way. In fact, today, while natural gas production has increased 37% since 1990, methane from production has gone down by 25%. I am concerned as such by your January announcement regarding methane regulation.
 - Why are you targeting such a steep 45% reduction in emissions from an industry that has already reduced its emissions significantly while increasing production? Moreover, the production sector represents only *0.4 - 1.4 percent* of U.S. GHG emissions.
2. In the Administration's January 14th release to reduce methane emissions from this industry, an assumption was given projecting that industry's methane emissions will be increasing by 25% - not decreasing as already shown.
 - Can you explain this assumption and provide the specific data from which you've based these projections?
3. Administrator McCarthy, I'm trying to understand EPA's rationale for pursuing another round of Clean Air Act regulations on natural gas production. This time the agency is directly targeting methane. I think it's important to note the industry's progress in reducing methane. Natural gas producers have reduced methane emissions by 25 percent since 1990, even as production has grown 37 percent.

A recent report by researchers at the University of Texas and the Environmental Defense Fund (EDF) found that methane emissions from the upstream portion of the supply chain are only 0.38 percent of production. That's about 10 percent lower than what the same research team found in a study released in September 2013. Studies by the National Renewable Energy Laboratory, U.N. IPCC, Massachusetts Institute of Technology, and many others reached similar conclusion: that methane emissions from natural gas production are declining, and quite low compared to other sources.

Moreover, we can't forget that methane is the main component of natural gas. Producers have every incentive to capture it and prevent leaks. The evidence I just cited shows this is exactly what they are doing.

The industry is only now implementing new source performance and MACT standards finalized in 2012, which target VOCs and sulfur dioxide, but also will help reduce

methane. So Administrator, my question is: Why is EPA pursuing another round of mandates on the industry? What is the rationale for moving down this path?

4. Administrator, EPA indicated it will develop new source performance standards for new and modified natural gas wells this summer. This action will be taken pursuant to Section 111(b) of the Clean Air Act, which covers new and modified sources. Some legal commentators believe that this action will provide the basis for regulations of existing wells under Section 111(d). What is EPA's legal view on this point? Once you finalize regulations under 111(b), are regulations for existing wells inevitable under 111(d)? Is EPA planning or thinking about regulation existing wells under 111(d)?

Environmental Education

For its FY2015 budget proposal, EPA requested zero funds for its environmental education program; yet its FY2016 budget proposal requests funds—albeit an increase in funds from \$8.7 million enacted in FY2015 to \$10.969 million.

- Why did EPA, after requesting zero funds for the program over the last couple years, request funds and an increase in funding for the program?
- EPA has recently identified climate change as a priority for environmental education grants under this program. These grants are used to educate elementary and secondary school students, train teachers, purchase textbooks, and develop curricula based on environmental issues EPA identifies as a priority. What performance measures are in place to ensure such curricula is based on the best available science?

Uranium and Thorium Mill Tailings

1. In January, the U.S. Environmental Protection Agency proposed "Health and Environmental Standards for Uranium and Thorium Mill Tailings (80 Fed. Reg. 4156). The agency maintains the rulemaking is necessary to reduce the risk of undetected excursions of pollutants from in situ uranium recovery operations into adjacent aquifers.
 - Does the agency have any evidence that these operations have adversely impacted an adjacent aquifer? If so, please provide such data.
 - Please explain why no such data is included in the rulemaking docket.
 - If EPA has no such data, please explain the basis for proceeding with this rulemaking.
2. In the cost benefit analysis accompanying the rulemaking, the agency focuses almost exclusively on the increased costs that would be imposed by the proposed rule's new monitoring requirements, which could require facilities to conduct more than 30 additional years of groundwater monitoring. EPA fails to assess multiple other costs that would be associated with the rule, including the costs of maintaining licenses, permits, etc. for 30 years; claims maintenance fees owed to the Bureau of Land Management for facilities on public lands; costs to obtain and maintain surety for additional years; costs

related to continuing leases with private surface holders; taxes; insurance; or the cost of maintaining equipment and facilities. Given the additional costs that would be imposed, it is likely that the ultimate cost would be several orders of magnitude higher than EPA calculated in their cost benefit analysis.

- Please explain why EPA chose to ignore these costs in its analysis.
- Does EPA plan to revise its cost benefit analysis to more comprehensively assess the costs of the rulemaking? If not, why not?

Sen. Booker:

- 1) The BEACH Act authorized the EPA to award grants to eligible states, territories, and tribes to develop and implement beach water quality monitoring and notification programs for coastal recreational waters. As a result, EPA's Beach Grants have made nearly \$10 million a year available for the past four years. The program allows for a more standardized approach to the monitoring of water quality and the notification of beachgoers if the water they are swimming in is unsafe for recreation.
 - a. What is EPA's justification for zeroing out funding for the BEACH Act grant program?
 - b. Given the reduction in EPA's proposed FY16 from \$10 million to \$0, how does EPA plan to assist state and local public health officials in identifying, notifying the public of, and ultimately reducing the risk of illness and disease to swimmers at our recreational beaches?

Senator Fischer:

National Environmental Policy Act (NEPA) Greenhouse Gas (GHG) Guidance

- 1) In your budget justification document you say:
"In support of the President's Climate Action Plan, the EPA will work to assist other federal agencies to improve the analysis of climate change issues under NEPA, including estimating greenhouse gas emissions associated with federal actions and consideration of mitigation measures, as well as fostering climate resiliency." Are you already implementing CEQ's draft guidance that would require all federal agencies to address global climate change in NEPA reviews?
- 2) In your role as a reviewer of Environmental Impact Statements developed by other agencies, do you believe you can require other agencies to adopt measures to mitigate global climate change?
- 3) Do you think that the draft CEQ guidance would give you the power to second-guess a decision by another federal agency that any effect on global climate change is insignificant and no EIS is needed?
- 4) Have you done any outreach to stakeholders on the draft CEQ guidance?

- 5) How will the new guidance affect how EPA complies with NEPA for its own actions, such as issuing Clean Water Act permits or developing regulations?

Renewable Fuels Standard (RFS)

- 6) In 2007, Congress put the Renewable Fuel Standard in place for 15 years, setting a stable policy environment to drive investment and growth in renewable fuel. This approach has guided billions of dollars from around the world and here at home toward innovation inside the United States. American agriculture has also responded to this investment signal. For example, just this year, 3 cellulosic biofuel refineries opened, each co-located with a corn ethanol facility. Each biorefinery is producing clean, cellulosic biofuel. Using specially designed equipment, all three facilities use corn stover, an agricultural waste material collected from the very same fields that provide corn to ethanol facilities. This didn't happen by accident. Farmers make planting decisions based on the RFS. Equipment manufacturers' invest million in R&D perfecting new equipment that can be available to serve this market. Congress made a promise in 2007, and it is the EPA's responsibility to uphold that promise with a regulatory process that meets our intent. The 2014 RVO proposal would have stranded billions of dollars of investment and ripped the rug out from under those in the private sector who responded to the investment signals of the RFS. Will your new proposal retain the commitment to American agriculture that we made nearly a decade ago?
- 7) Your staff has recently stated that you anticipate putting out RFS volumes by late June. Do you see that as acceptable? Given that we have biodiesel producers across the country shutting down or idling their plants, why do we need to wait another four months? If we wait until June we've lost another half of a year.
- 8) Your staff also recently stated that 2014 numbers will be based on actual production. What does that mean exactly? Does that mean the volumes will be set at the levels that were actually produced under the RFS in 2014? And can we assume that we will see growth from there in the biodiesel category in 2015 and 2016?
- 9) You recently approved an application from Argentinian companies to essentially streamline biodiesel imports from Argentina under the RFS. Why would you do that when the overall RFS hasn't been set for two years and the U.S. industry is in disarray? It almost shows a disregard for the U.S. companies that we know are struggling as a direct result of the delays on the RFS. Can you explain why you would do that at this time? Why not wait until the RFS volumes are set and then make a decision on the Argentina imports?
- 10) I understand that in setting the annual biodiesel volumes you are required under the law to look at production capacity and other factors. So now that we know this extra production exists and is likely coming to the United States, how will you account for that as you set annual RFS standards for biodiesel? In other words, will you increase volumes

more aggressively to allow U.S. producers to continue to grow, so that they're not displaced by these Argentinian imports?

EPA Region 7

11) Private Nebraska building contractor entities have shared inquiries and questions regarding EPA Region 7, Kansas City, and the utilization of resources and personnel enforcing lead paint regulations against Nebraska home and building contractors. In particular, private building contractors have expressed concerns involving the manner and rationale of investigations conducted by Region 7 and the protocol for fines pursued for stated violations.

12) In order to address concerns expressed by Nebraska private contractor interests, I request that EPA provide the following information involving Region 7, Kansas City and the regulation of lead paint in private homes and commercial businesses:

13) Please provide a budget breakdown of:

The amount of Region 7 funds expended for outreach and education to the building contractor community in Nebraska.

The amount of funds directly tied to educating property owners and building contractors on EPA lead paint rules and regulations.

What amount of Region 7's Budget is dedicated to investigations and pursuit of fines?

14) Does Region 7 contract with private or commercial entities to investigate reported violations?

15) Does Region 7 offer financial incentives to individuals who

Sen. Wicker:

1) As I hope you know, a one-sided focus on worst-case stories and scenarios is a poor foundation for sound environmental and economic policies. There is an extraordinary amount of uncertainty in climate science mainly because of the complex nature of the climate and climate models. Climate model predictions have wildly varying degrees of accuracy and many have estimates that failed to come to fruition. With so much uncertainty and unknown variables regarding the impacts of carbon dioxide on the world's oceans and environment how can you possibly accurately estimate the costs and benefits of your proposals? Considering you can't provide a quantifiable, measurable direct impact of these regulations on sea level rise and global temperatures, don't you think the other supposed benefits to society are equally uncertain and overstated?

2) With each and every climate regulation put forward by the administration, the supposed benefits of each regulation continue to get smaller and and smaller and more imaginary

while the costs to American taxpayers and the economy continue to grow. A sound environmental and economic policy would place amount of regulation, in this case carbon dioxide emissions, where the marginal benefits are equal to the marginal costs. It seems the opposite is true in the latest EPA budget proposal. While carbon dioxide emissions continue to rise across the globe, at what point will EPA begin to allocate their limited budgetary resources to other programs that have greater benefits to American taxpayers while imposing lower costs on them?

- 3) In the FY16 budget request, EPA notes it will be finalizing rules for formaldehyde emissions in composite wood products. Why has EPA decided to regulate laminated products when the authorizing legislation gives you authority to exempt those products? The testing costs far exceed any benefit considering that studies submitted to EPA show that the value added process of finishing laminated products can reduce the emission profile of an already compliant platform.
- 4) With respect to the ongoing rulemaking on formaldehyde emissions in composite wood products, you recently stated that laminates could potentially be a "significant source of emissions." Does EPA have scientific data that validates that statement? Will you share it with the committee? Data submitted to the public record during the rulemaking shows that the value added process of finishing laminated products can reduce the emission profile of an already compliant platform.
- 5) The academic and scientific communities are actively pursuing research into the magnitude of methane emissions from various sectors of the U.S. economy. With much of this research outstanding, why doesn't EPA wait to understand the major sources of methane emissions before promulgating regulation?
- 6) EPA's announcement last month on methane regulation indicated that there was no intention to regulate existing sources in the oil and gas industry at this time, instead, the agency would allow for voluntary actions by industry for existing sources. Aren't the control technique guidelines, coupled with your pending ozone regulation essentially a defacto regulation of existing sources in the industry?

AL-15-000-6113

Congress of the United States
Washington, DC 20515

March 2, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest
Washington, D.C. 20460

Dear Administrator McCarthy:

We write regarding the Environmental Protection Agency's (EPA) proposed plan for the cleanup of the Velsicol Burn Pit Superfund Site located in St. Louis, Michigan. As you know, for more than a decade this site was used by the Michigan Chemical Company, and later the Velsicol Chemical Company, as a place to burn and dispose of industrial waste, including the pesticide DDT. This industrial pollution contaminated the soil and surrounding groundwater. We encourage the agency to address the concerns of local officials and citizens before finalizing its proposed plan to remove industrial pollution from the site.

In recent public comments submitted to the EPA by the Pine River Superfund Citizen Task Force and the city of St. Louis, citizens expressed concerns that the EPA's proposed cleanup plan for the site did not contain enough detail for the community to make an informed decision. The document fell short in its failure to plan for real-time monitoring during remediation; its lack of confirmation sampling after the EPA's planned treatment is finalized; its reliance on a pumping system proposed for another site, but not yet installed; and its failure to plan for long-term monitoring of the site.

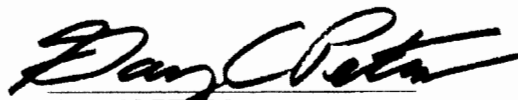
We share the community's concerns and commitment to protect human health and the environment. We ask that any final remedy ensure the health and safety of St. Louis residents and allow for the restoration of the economic and recreational potential of the property.

According to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the EPA must meet nine criteria when choosing a remedy for a Superfund site, one of which is community acceptance. As the EPA works to finalize a cleanup plan for the site, we ask the agency to give strong consideration to the voice of the community as well as maintain a transparent and inclusive process.

Thank you in advance for your prompt attention and response to this matter.

Sincerely,


DEBBIE STABENOW
U.S. Senator


GARY PETERS
U.S. Senator


JOHN MOOLEENAAR
Member of Congress



United States Environmental Protection Agency
Regional Administrator
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

AL-15-000-6113C

APR 07 2015

The Honorable Debbie Stabenow
United States Senate
Washington, D.C. 20510

Dear Senator Stabenow:

Thank you for your March 2, 2015 letter regarding community concerns about the U.S. Environmental Protection Agency's proposed plan for operable unit 1 of the Velsicol Burn Pit Superfund Site in St. Louis, Michigan.

The Agency is currently reviewing comments submitted during the public comment period, which ended on January 24, 2015. EPA held a public meeting on December 3, 2014 as part of the comment process. The Agency will carefully consider all comments before selecting the final cleanup plan and will prepare responses to comments, as well. EPA will also keep the community informed throughout the decision-making and cleanup process at the Velsicol Burn Pit Site.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Eileen Deamer or Ronna Beckmann, the Region 5 Congressional Liaisons, at (312) 886-3000.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Hedman", is written over a horizontal line.

Susan Hedman
Regional Administrator

Congress of the United States

Washington, DC 20515

March 3, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

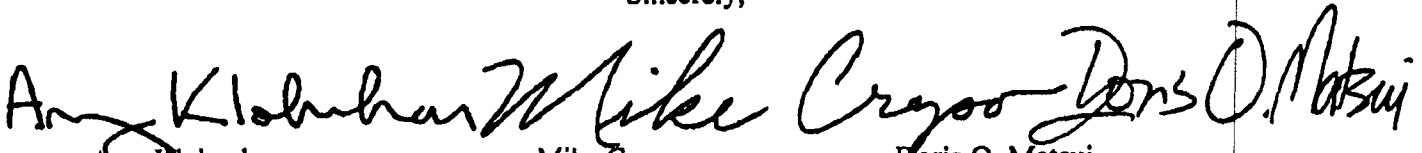
Dear Administrator McCarthy,

During the 111th Congress, we sponsored the bipartisan Formaldehyde Standards for Composite Wood Products Act that was passed by Congress and was enacted into law by President Obama on July 7, 2010. This legislation set tough limits for formaldehyde emissions to protect consumers from potentially hazardous levels of formaldehyde in composite wood products and to ensure a level playing field for the U.S. timber industry.

This law is the result of several years of negotiations and has the support of all of the affected industries, as well as public health and environmental groups. That is why we are concerned that the implementing regulations for this legislation have not been finalized. The law required final promulgation of regulations no later than January 1, 2013. We are now two full years past that statutory deadline with action by your Agency still incomplete and there are reports that potentially hazardous products are still being sold in the United States, posing a risk to consumers and families.

It is important for American consumers and the wood products industry that we have a national formaldehyde standard for composite wood products in place as soon as possible. We urge swift action to complete this regulation that will protect consumers and set clear, enforceable standards for these products. We request that your Agency provide our offices with a timeline for completing the necessary rulemakings on formaldehyde in composite wood products. We also request an explanation for the delay in this rulemaking. Please provide this information to our offices by March 13, 2015. Thank you for your timely action on this important issue.

Sincerely,


Amy Klobuchar Mike Crapo Doris O. Matsui
United States Senator United States Senator United States Representative



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 25 2015

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Amy Klobuchar
United States Senate
Washington, D.C. 20510

Dear Senator Klobuchar:

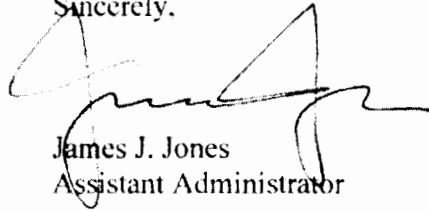
Thank you for your March 3, 2015, letter regarding the progress of the implementation of the Formaldehyde Standards for Composite Wood Products Act (Title VI of the Toxic Substances Control Act or TSCA Title VI). The agency agrees that a national formaldehyde standard for composite wood products is important for American consumers and the wood products industry, and is working diligently to complete the regulations that will implement the Act.

Prior to proposing the rules to implement the Formaldehyde Standards for Composite Wood Products Act, both proposals were submitted to the Office of Management and Budget on May 5, 2012 for review under Executive Order 12866. After more than a year of review and consultation with OMB, the rules were proposed on June 10, 2013 (78 FR 34795 and 78 FR 34820). The EPA twice granted extensions to public comment periods for both proposals, as requested by numerous commenters. In addition, the EPA on April 8, 2014 (79 FR 19305) reopened until May 8, 2014 the comment period for the proposed rule to implement TSCA Title VI emission standards (78 FR 34820) to seek additional public input regarding potential modifications to the agency's proposed treatment of laminated products. The EPA also announced a public meeting, held on April 28, 2014, to provide an opportunity for further public comment on this set of issues. Based on input from public meeting participants, the EPA extended the comment period related to the treatment of laminated products under the regulation until May 26, 2014. At this time, the agency continues to address the technical and legal complexities of this issue, including the consideration of opportunities to harmonize its proposed program with the current California Air Resources Board's Airborne Toxics Control Measure, while accommodating thousands of comments submitted by a diverse cast of stakeholders.

The EPA is very sensitive to the potential impact of these requirements on the American manufacturing sector and engaged numerous stakeholders, including small businesses, many of which provided input to the Small Business Advocacy Review Panel for these proposed regulations. The EPA took their input, and the SBAR Panel deliberations, into account in designing the proposed exemption for laminated products. In an ongoing effort to reach out to potentially affected stakeholders, the EPA met and continues to meet with companies and trade associations that represent, among other members, producers of laminated products. As part of this effort, the EPA specifically requested data on formaldehyde emissions from laminated products, as well as comments and information on the proposed definition of laminated products. The EPA received a wide variety of public comments on this issue, including comments from trade associations representing laminated product producers and producers of similar products, environmental advocacy groups, and individual businesses. The agency will consider all information received from commenters in developing the final rule, which is expected to be made final this year.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Mr. Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at kaiser.sven-erik@epa.gov or (202) 566-2753.

Sincerely,

A handwritten signature in black ink, appearing to read 'James J. Jones', with a stylized flourish extending to the right.

James J. Jones
Assistant Administrator

AL-15-000-7273

TIM KAINE
VIRGINIA

WASHINGTON OFFICE:

WASHINGTON, DC 20510-4607
(202) 224-4024

COMMITTEE ON
ARMED SERVICES

COMMITTEE ON
FOREIGN RELATIONS

COMMITTEE ON
THE BUDGET

SPECIAL COMMITTEE
ON AGING

United States Senate
WASHINGTON, DC 20510-4607

March 26, 2015

Ms. Laura Vaught
Associate Administrator for Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Ms. Vaught:

Enclosed is correspondence from my constituent, *exempt b*, in reference to an issue he has encountered involving the Environmental Protection Agency.

exempt b believes there to be substantial groundwater and asbestos pollution adjacent to property he owns. He has reached out to the Virginia Department of Environmental Quality but feels the response was inadequate. Your immediate attention and assistance with the concerns expressed in this case would be greatly appreciated.

I would also appreciate being provided a response that I may forward to (constituent name) explaining the status his (letter, concern, complaint, etc.). Please respond to my Regional Director, Gwen Mason, at 611 S. Jefferson Street, Suite 5B, Roanoke, VA 24011. You may also reach Gwen by phone at (540) 682-5693 or by e-mail at: gwen_mason@kaine.senate.gov.

Thank you for your assistance to my constituent.

Sincerely,


Tim Kaine

exempt
exempt

MAR 20 2015

To: Senator Tim Kaine

From. exempt

Subject: Pollution of Ground Water/Drinking Water & Asbestos Site

I enclose herewith Report of massive Ground Water/Aquifer pollution problem submitted months ago to both Mathews County & State officials. It seems apparent that these agencies are unable of unwilling to resolve the problem. Piles of lead painted cinderblocks & and asbestos residue threaten adjacent ground water and aquifers. I own a 3 acre lot adjoining the pollution site. I think other adjacent property owners have reported this to county officials with no results. This is a serious, ongoing, unresolved problem.

The enclosed Complaint lists the addressee/phone #'s Re. site location, owners, & contractor.

I am 88 years old and reside in a Richmond Retirement facility and do not wish to be involved beyond this Report. If necessary you may contact me via Email: vagrans@ exempt

I hope you will ensure this matter is investigated by the appropriate government agency. THANK YOU



SUBJECT: COMPLAINT: Asbestos & Lead Paint Pollution @ Sandbank (Old Nursing Home, Property)
January 30, 2015

FROM: Adjacent Property Owner

The new owner/, developers of the 12 acre Old Nursing Home property @ exempt b continue to store massive amounts of what appears to be lead paint and asbestos residue. This results from an failing attempt to demolish the old 100,000 SF structure built in the 1930's. The contractor engaged in the demolition appears to be exempt b

with exempt b. We believe he is also an owner
now listed as exempt b. Both own summer homes in New Point. - The property located at exempt b

The photos enclosed reflect large piles of debris from a cinder block building painted inside and out with what appears to lead based paint. It is also likely that the insulation and wallboard contain significant amounts of asbestos.

Our concern started a year ago when we informed County Officials of several apparent violations of county regulations/laws. Our complaint is enclosed as Attachment A. We assume the unlimited resources of the violators may have influenced the inaction of county officials, so we hope state or federal officials will investigate and correct this very serious environmental problem.

The owners are now in the process of tearing down the Nursing Home building. It is a mess with piles of debris that appear to contain large amounts of both asbestos and lead paint residue. With the high water tables here, there is danger of polluting adjacent property water aquifers.

The Owners also have discussed filling the pond as a means of improving their property. Since the 1930's the pond and connecting ditch have been the natural drain for all the properties between Rt. 602 and Doctor's Creek. If this were done ALL these properties would be flooded. The pond and surrounding area are clearly WETLANDS & TIDAL.

Please direct this Complaint to the appropriate Investigative source! THANK YOU

exempt
exempt

To:

exempt

From:

exempt

Subject: Hazardous Materials - Old Nursing Home Property

I own three acres adjacent to the above property which I visited recently. There appears to be large piles of undisposed lead based paint & asbestos material which could contaminate adjacent property. With the high water tables in Mathews, there is danger of polluting adjoining property water aquifers.

Please note the attached photo of surface water spilling across to roadway toward adjacent properties.

Are county officials monitoring this situation? If not, I hope you will ensure this complaint is investigated and resolved.

Sincerely, ..

exempt
Email: ..

2/2/15

Sent from Windows Mail

From:

Sent: Thursday, February 12, 2015 4:04 PM

To: *exempt6*

Dear *exempt6*

This email is in response to your letter concerning the possibility of hazardous materials on the old nursing home property off of Sand Bank Road. Our department is not involved in either determining or disposal of hazardous materials. This is a concern for the Building Official and I will contact him on your behalf and give him a copy of your email. However, I am suggesting that you contact the State Department of Environmental Quality (DEQ) and talk to *exempt6* who is in charge of pollution response. He is affiliated with the *exempt6* Piedmont Regional Office that serves Mathews County. His contact phone is *exempt6*. *exempt6* I have worked with *exempt6* several times on past issues and I feel that he will handle your concern thoroughly.

Sincerely,

exempt6
exempt6
exempt6
exempt6
exempt6
exempt6
exempt6

Exempt
Exempt

TO: Virginia Dept. of Environmental Quality

Dear Exempt

Please note the attached complaint of a pollution problem submitted to Mathews County officials and their response that the matter be referred directly to your Department. Therefore I enclose a DEQ Pollution Report with all the information I have on the matter.

This appears to be a serious lead paint & asbestos problem and a threat to all adjacent property water aquifers. Since I no longer live in Mathews, any additional information should be sought from other neighborhood property owners. THANK YOU

Sincerely,

Exempt
Email: Exempt
214115



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

APR 20 2015

Gwen Mason, Regional Director
611 S. Jefferson Street, Suite 5B
Roanoke, Virginia 24011

Dear Ms. Mason:

Thank you for Senator Kaine's letter of March 26, 2015 to the U.S. Environmental Protection Agency (EPA) on behalf of his constituent, *exempt* concerning the presence of lead paint and asbestos debris at the property located at *exempt* in New Point, Virginia. In the information provided by your office, *exempt* expressed concerns over the possibility of groundwater/aquifer pollution occurring due to the potential runoff of these materials from the property in question.

Research has shown that in addition to transport to soil, surface water, and sediment via surface runoff, asbestos can be transported to groundwater. Since asbestos does not dissolve in water and tends to bind to soils, a significant migration pathway from soil to groundwater is unlikely. Lead also binds to soils and is unlikely to migrate into groundwater. While groundwater velocity and soil type can affect the potential migration of asbestos or lead, the transport of asbestos fibers in groundwater is minimal because groundwater velocities are very low.

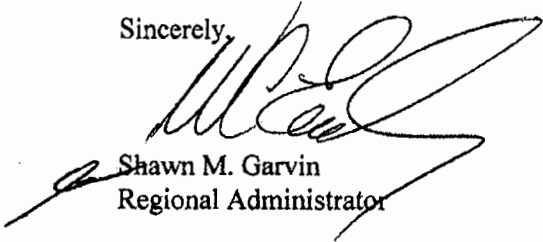
To address *exempt* concerns about the presence of the asbestos and lead debris, EPA has referred *exempt* concerns to the Virginia Department of Labor and Industry (VA DOLI) which has been delegated the authority to investigate concerns regarding the property. Mr. Ronald Graham, the VA DOLI State Designee contact for issues regarding the National Emission Standards for Hazardous Air Pollutants for Asbestos (Asbestos NESHAPs) can be contacted by phone at 804-786-0574 or by email at Graham.Ronald@dol.gov.

The Virginia Department of Environmental Quality (VA DEQ) maintains authority regarding nonhazardous solid waste and VA DEQ's Piedmont Regional Office (<http://www.deq.virginia.gov/Locations/PiedmontRegionalOffice.aspx>) manages issues occurring within Mathews County. According to Mr. Jeremy Kazio, the Pollution Response Coordinator for VA DEQ's Piedmont Regional Office, he obtained certifications that all asbestos had been removed from the building on the property in July of 2014. Mr. Kazio also stated that lead testing conducted on the property in March of 2015 indicated that no lead existed on any surfaces. For more information about the certifications and reports related to this matter and the current status of the property, Mr. Kazio can be contacted by phone at 804-527-5042 or by email at Jeremy.Kazio@deq.virginia.gov.

In addition, *length* has indicated that a pond may also be filled. If this pond is a water of the United States, a Clean Water Act Section 404 permit may be required for activities which may result in the discharge of fill material. The U.S. Army Corps of Engineers Norfolk District (Phone: 757-201-7652) would issue Section 404 permits for the federal government, should one be required. The Norfolk District Regulator of the Day can be reached at 757-201-7652.

If you have any questions, please do not hesitate to contact me or have your staff contact Mr. Matthew Colip, EPA's Virginia Liaison, at 215-814-5439.

Sincerely,



Shawn M. Garvin
Regional Administrator

AL-15-0006827

CHARLES E. SCHUMER
NEW YORK

United States Senate

WASHINGTON, DC 20510

COMMITTEE
ON
BANKING,
DEMOGRAPHIC POLICY & COMMUNICATIONS
FINANCE
JUDICIARY
RULES

March 22, 2015

The Honorable Elliot Kaye
Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dr. Thomas R. Frieden
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Kaye, Administrator McCarthy, Director Frieden, and Chairwoman Ramirez:

I write you today to urge the Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), and Center for Disease Control (CDC) to immediately launch a broad investigation into the safety of Chinese-imported laminate wood flooring material from Lumber Liquidators and to also fully examine the whether CPSC's voluntary industry standard for formaldehyde serves as adequate guidance for protecting the health of consumers. The greater New York City area and Long Island have shown their remarkable resilience in the wake of hurricane Sandy, as evidenced by the quick rebuilding of communities and homes. It is critical that CPSC partners with the EPA and CDC to ensure that these consumers and others have not purchased wood laminate flooring that contains unacceptable levels of formaldehyde.

As you know, a recent 60 Minutes report, based off of testing of wood materials from New York stores, exposed concerns that Lumber Liquidators' laminate flooring contains unsafe levels of formaldehyde, a dangerous carcinogen that can cause short- and long-term respiratory problems, and other health problems. In addition, the report suggested that Chinese mills manufacturing the product were not complying with the California Air Resources Board emission standard (CARB 2) and were falsely labeled as in compliance. Given that Lumber Liquidators has over 360 stores across the country, including at least fifteen in New York State, your Agencies must make an immediate investigation a top priority, as impacts could be widespread.

I encourage CPSC to use its authority under the Federal Hazardous Substance Act to conduct a defect investigation on the product and if necessary create a mandatory standard for formaldehyde levels in laminate wood flooring. In addition, if it is found that the Chinese-imported wood laminate flooring from Lumber Liquidators is contains dangerous levels of formaldehyde, I urge the CPSC to fully explore using its authority for product recalls. It is critical that CPSC partners with EPA and CDC to utilize each agencies expertise to do an in-

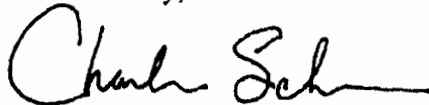


depth investigation into the safety of these products. In addition, it is important that in your agencies examination that you also determine whether the voluntary industry standard, which has been set by the American National Standards Institute (ANSI), is in fact adequate for protecting public health.

I am also concerned that the incorrect labeling of these products as compliant with California's consumer safety standards could mislead consumers into a purchase they would otherwise not make. This kind of misinformation could constitute an unfair or deceptive trade practice in violation of Section 5 of the Federal Trade Commission Act. I hope you will coordinate with the Chairwoman of the FTC, copied here, to investigate and pursue any such violations.

Thank you for your attention to this important issue and I look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Schumer". The signature is fluid and cursive, with the first name "Charles" and last name "Schumer" clearly distinguishable.

United States Senator
Charles E. Schumer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 5 2015

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Charles E. Schumer
United States Senate
Washington, DC 20510

Dear Senator Schumer:

Thank you for your March 22, 2015, letter to the U.S. Environmental Protection Agency requesting that the agency coordinate with the Consumer Product Safety Commission, the Centers for Disease Control and Prevention, and the Federal Trade Commission concerning issues brought to light by a recent 60 Minutes report on formaldehyde emissions from laminate wood flooring material. The EPA is coordinating with the CPSC on this issue.

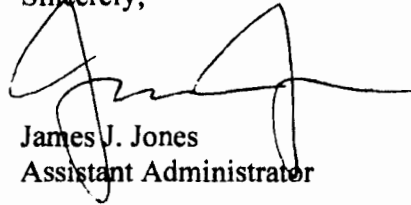
As you know, the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI) establishes formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard. Congress chose to include laminated products on the list of composite wood products to be regulated under TSCA Title VI. Congress also provided the EPA with the authority to modify the definition of laminated product and exempt some or all laminated products from the definition of hardwood plywood pursuant to a rulemaking under TSCA Title VI, which shall be promulgated "in a manner that ensures compliance with the [statutory] emission standards."

The agency agrees that a national formaldehyde standard for composite wood products is important for American consumers and the wood products industry, and is working diligently to complete the regulations that will implement the Act. As part of this effort, the EPA specifically requested data on formaldehyde emissions from laminated products, as well as comments and information on the proposed definition of laminated products. The EPA received a wide variety of public comments on this issue, including comments from trade associations representing laminated product producers and producers of similar products, environmental advocacy groups, and individual businesses. The agency will consider all information received from commenters in developing the final rule, which is expected to be made final later this year.

In regard to concerns you raise about consideration of voluntary industry standards for formaldehyde and their adequacy as guidance for protecting the health of consumers, as I indicated earlier, my staff are already in contact with the CPSC and will continue to coordinate appropriately.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Mr. Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at kaiser.sven-erik@epa.gov or (202) 566-2753.

Sincerely,

A handwritten signature in black ink, appearing to be 'James J. Jones', written over a horizontal line.

James J. Jones
Assistant Administrator

United States Senate

WASHINGTON, DC 20510

March 10, 2015

Ms. Laura Mohollen
State/Congressional Liaison
U.S. Environmental Protection Agency Region III
1650 Arch St
Philadelphia, PA 19103-2029

Dear Ms. Mohollen,

My constituent, *exempt b* has contacted me on behalf of the BoRit Community Advisory Group regarding the proposed construction of housing in Ambler, Pennsylvania in an asbestos waste removal area. The proposed construction borders an existing Superfund site.

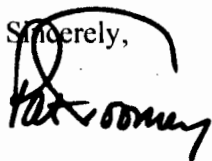
exempt b enclosed letter details the situation and her cause for concern. As you will note, *exempt b* is requesting EPA's oversight of this site and suggests that all of the parcels of lands from the 55 acre complex be considered for Superfund classification.

Please provide me with any information on the EPA's involvement in this matter. Please address your response to my Staff Assistant, Philip Innamorato, at:

1628 John F. Kennedy Blvd
Suite 1702
Philadelphia, PA 19103
Phone: 215 241 1090
Fax: 215 241 1095
Email: Philip_Innamorato@toomey.senate.gov

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,



Pat Toomey
U. S. Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

APR 28 2015

The Honorable Patrick J. Toomey
United States Senate
Washington, D.C. 20510

Dear Senator Toomey:

Thank you for your March 10, 2015 letter on behalf of your constituent, *exempt b* concerning the proposed construction of housing units on a former Keasbey & Mattison facility in Ambler, Pennsylvania. *exempt b* requested U.S. Environmental Protection Agency (EPA) oversight of the project and asked that all land parcels related to a former asbestos processing complex be addressed under the Superfund program.

The proposed construction project referred to by *exempt b* is called Ambler Crossings. The property on which it will be built, the Bast property, was a former asbestos products manufacturing facility. The Bast property is not being evaluated for inclusion on EPA's National Priorities List (NPL), nor is it the subject of other federal cleanup or enforcement authorities. The property is being managed under the Pennsylvania Department of Environmental Protection's (PADEP) Act 2 Program, which is designed to clean up contaminated sites that are suitable for redevelopment. In 2004, EPA and PADEP entered into a Memorandum of Agreement (MOA) that discusses roles and responsibilities at such properties. For more information about the MOA, please visit:
http://www.epa.gov/brownfields/state_tribal/moas_mous/pa_moa.pdf

Both Ambler Borough and PADEP approved the plans for Ambler Crossings, and PADEP's Act 2 Program is responsible for ensuring that the cleanup is performed properly. The approved plan calls for a capping remedy, which is consistent with EPA's asbestos regulations. Capping is an accepted technology for this property because it will limit the mobility of air-borne contaminants, such as asbestos fibers, and will prevent dermal contact. For asbestos, in particular, inhalation is the most significant exposure route.

In the vicinity of the proposed construction project, there are several former Keasbey & Mattison properties, including two federal Superfund sites that are being addressed by the EPA: the BoRit Asbestos Site and the Ambler Asbestos Piles Site. These Superfund sites once received asbestos-containing waste materials. EPA completed the cleanup work at the Ambler Asbestos Piles site on August 30, 1993 and the site was deleted from the National Priorities List (NPL) on December 27, 1996, having met all of the cleanup requirements under the Superfund law. The BoRit Asbestos Site was listed on the NPL in April 2009, and EPA is currently conducting a cleanup action to stabilize asbestos-containing materials and completing an investigation into the source and extent of contamination at the site.

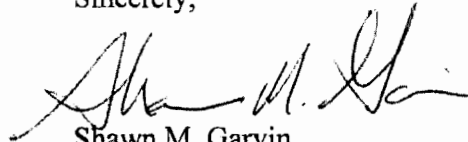


Exempt letter to the editor of the *Ambler Gazette*, published on February 14, 2015, stated that the Bast property "consists of 90 percent asbestos and 10 percent soil to a depth of 21 feet." We would like to clarify that only one sample showed 90 percent asbestos and that sample was collected at 5-5.5 feet below ground surface. We offer this clarification to ensure that the site conditions are properly characterized based on sound science. Sampling data taken from the Bast property is contained in a report known as the *Langan Report*. It was prepared by a private contractor for a former prospective developer of the Bast property. Detailed information about the Ambler Crossings proposal and the *Langan Report* may be obtained from PADEP's Act 2 program office, and both documents are posted on the BoRit Asbestos Community Advisory Group (CAG) website at: <http://www.boritcag.org>.

EPA has strived to provide a transparent process in which the community may participate in the Superfund process and, in 2009, EPA worked with community members to facilitate the formation of the BoRit Asbestos CAG. Since the CAG's formation, they have elected to expand their scope to consider other properties in Ambler, some of which EPA's Superfund program is not authorized to address. With regard to the Bast property, EPA facilitated two public presentations this year. One presentation was made by the developer to the CAG's Remediation, Redevelopment and Monitoring Committee in late January, and the other presentation was made by the developer and PADEP at the February 4, 2015 full meeting of the CAG.

If you have any questions, please do not hesitate to contact me or have your staff contact Mrs. Kinshasa Brown-Perry, EPA's Pennsylvania Liaison, at 215-814-5404.

Sincerely,



Shawn M. Garvin
Regional Administrator

